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Supreme Court of the United States

OCTOBER TERM, ~~1948~~ 1949

No. ~~532~~ 18

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES.

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I

In its petition to this Court for a writ of certiorari, petitioner stated the question presented by this case to be whether the statute of limitations is suspended during the period of enemy occupation of the situs of property taken by the United States for military purposes in time of war because of the fact that during that period petitioner was *deprived completely of access to information bearing on the existence of its claim.* It was then shown in the petition (pp. 3-4) and in the supporting brief (pp. 14-16) that petitioner was in fact completely without access to information bearing on the existence of its claim against the United

States not only during the period of the Japanese occupation of the Philippine Islands from December, 1941, until sometime after February, 1945, but also for a considerable period thereafter.

The Government, in its brief in opposition to petitioner's application for a writ of certiorari, has restated the question in terms of whether the statute of limitations was tolled by reason of the fact that petitioner was unable to obtain *complete information about the property taken*. This statement of the question assumes, of course, that petitioner had at least some knowledge during the period of Japanese occupation of what had happened to its various installations throughout the Philippines.

It is submitted that such was not, and has been sufficiently demonstrated not to have been, the fact; that even the United States Government and its military representatives were, by virtue of the Japanese occupation, shut off from information which could have been used most profitably in the early liberation of the Philippines; and that respondent's rephrasing of the question presented does not state accurately the issue before this Court for consideration. The fact is that petitioner was completely without knowledge of the existence of its claim against the United States and could not have obtained such knowledge during this period of the Japanese occupation of the Philippines.

Petitioner knew, of course, that it had various installations in the Philippines at the outbreak of the war. It might have assumed, perhaps, that all such installations had been damaged to a greater or lesser extent by reason of the war and, if it had been merely a question of the amount of damage sustained, it could conceivably have followed the course suggested by the Government and the court below

and asserted a claim for an indefinite amount. But the question that confronted the petitioner was not the *amount* of liability, but the *fact* of liability. Petitioner's claim rests not upon an injury to property by reason of the Japanese war, but upon the taking by the United States military forces. In order for petitioner to be in a position to assert a claim against the United States in respect of any given installation, it had to have at least sufficient information to give rise to a reasonable belief that prior to the Japanese occupation, the United States Army had actually taken the property from petitioner. The only possible sources of such information, however, *i.e.*, the persons present at the time of the taking, were unavailable to petitioner during the period of Japanese occupation. It was, therefore, obviously impossible for it to file with the Court of Claims "proper claims which, even though they may not have been complete and accurate, could nevertheless have been amended so soon as the full facts concerning them came into possession of the plaintiff" (Resp. Br. pp. 12-13).

In line with its statement of the question presented, respondent urges as here controlling the language of this Court in *McIver* v. *Ragan*, 2 Wheat. 25, 29 (U. S. 1817), where Chief Justice Marshall wrote "The difficulties under which the plaintiffs labored respected the trial, not the institution of their suit." If petitioner had known of the existence of its claim against the United States during the period of Japanese occupation, the rationale of the quoted sentence would be compelling. However, it is hardly conceivable that a claimant can be called upon to assert against the United States a claim as to the existence of which it was completely without information or be penalized for having failed to do so.

II

Respondent argues in its brief that statutes of limitation are not tolled during time of war as to alien nationals of allied or non-belligerent countries, residing therein, even though there exist great obstacles to communication and transportation produced by war. For this proposition it cites a number of Workmen's Compensation Act cases decided in state-court litigation commenced after the First World War (Resp. Br. p. 8)*. It is submitted that none of these cases substantiates the proposition for which it is cited.

In the *Peppas* case plaintiff's decedent, a citizen of Greece, was killed in an industrial accident in this country in November, 1916. Information of the death was received by plaintiff in November, 1917, and she immediately executed and sent to this country a power of attorney authorizing enforcement of any claim for compensation that she might have. However, no claim was filed until January, 1920.

In holding the claim barred by the one year limitation-of-action provisions of the Colorado Workmen's Compensation Act the court said (p. 665):

> "* * * It is contended that the existence of the war and the blockade of Greece prevented such action and excused the failure [to file the claim promptly]. This

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Industrial Commission v. *Peppas*, 203 Pac. 664 (Colo. 1922); *Inland Steel Co.* v. *Jelenovic*, 150 N. E. 391 (Ind. App. 1926); *Sadowski* v. *Hubbard Steel Foundry Co.*, 193 N. E. 676 (Ind. App. 1935); *Gorski's Case*, 116 N. E. 811 (Mass. 1917); *Kolundjija* v. *Hanna Ore Mining Co.*, 193 N. W. 163 (Minn. 1923); *Lipmanowich* v. *Crookston Lumber Company*, 210 N. W. 47 (Minn. 1926); *Industrial Commission of Ohio* v. *Rotar*, 179 N. E. 135 (Ohio 1931); *Siplyak* v. *Davis*, 119 Atl. 745 (Pa. 1923); *Poccardi* v. *Ott*, 98 S. E. 69 (W. Va. 1919).

would be true only in so far as those facts were responsible for the failure. * * *"

Far from standing for the proposition that statutes of limitation are not tolled "despite great obstacles to communication and transportation produced by war" (Resp. Br. p. 8), the Colorado court observed in its opinion that obstacles such as the existence of war and blockade *would* excuse failure to make seasonable claim for compensation if *those facts were responsible for the failure.*

The *Kolundjija* and *Lipmanowich* cases, decided by the Supreme Court of Minnesota, were both cases in which the statutory period had commenced to run after hostilities had been terminated by the signing of the Armistice but before peace was declared by the Joint Resolution of July 2, 1921. For all practical purposes the war was over, and lines of communication and transportation between Europe and the United States had been once again established. It is pertinent to note that in holding effective the statutory bar, the Minnesota court made no mention of any "great obstacles to communication and transportation produced by war" nor did it state that the statute of limitations would not be tolled despite such obstacles. The *Gorski* and *Poccardi* decisions follow the reasoning adopted by the Minnesota court.

In the *Jelenovic* and *Sadowski* cases the Appellate Court of Indiana held, in accordance with the established rule (Pet. Br. p. 13), that the statute of limitations was tolled because of the fact that in each case plaintiff was a resident enemy alien. In neither case was there any indication that the statute might not be tolled despite the "great obstacles" emphasized by respondent. To the same effect are the *Rôtar* and *Siplyak* cases.

Respondent argues, however, that the difficulties under which petitioner operated "were certainly no more severe than those under which plaintiffs labored in the above cases" (Resp. Br. p. 8). That this statement is not true is obvious.

In December, 1941, the Japanese forces made their initial landings in the Philippines, and by May, 1942, enemy occupation of the Islands was essentialy complete. MacArthur had withdrawn, Corregidor had surrendered, and organized resistance was non-existant. It is now a matter of common knowledge that all local civilians remaining in the Islands were either interned in concentration camps or killed. All records and files that had not been destroyed before the invading forces descended were seized and removed from the possession of their owners. This, of course, was true in respect of the records and files of petitioner as well as of the records and files of other business organizations located in the Philippines. Even before the declaration of war on Japan commercial communications, by mail, cable or otherwise, had been greatly curtailed, and shortly thereafter even such limited communications were shut off.

Under such circumstances it was obviously impossible for petitioner to obtain any information as to the existence of even a possible claim it might have against the United States in respect of property taken for military purposes. Certainly the difficulty inherent in these circumstances is far removed from the difficulties considered indirectly in the cases cited by respondent.

The plain fact is that the courts were closed to petitioner during the period of the Japanese occupation just as effectively as if petitioner had been an enemy alien, a situation which even respondent admits would have tolled the statute of limitations. *Cf. Osbourne v. United States,* 164 (2d) 767 (C. C. A. 2d, 1947).

III

Respondent concedes the rule stated in *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1869), that "a statute of limitation may be suspended by causes not mentioned in the statute itself", but stresses the further language of this Court in the *Braun* opinion to the effect that such causes should be admitted "with great caution". It is not petitioner's position that this Court should do otherwise. However, it is petitioner's position that the circumstances here considered bring this case within the rule followed in the *Hanger*, *Braun* and *Osbourne* cases and that the running of the statute of limitations was accordingly suspended during the period of the Japanese occupation of the Philippine Islands.

Conclusion

It is respectfully submitted that this case calls for the exercise of supervisory powers by this Court and that the writ should be allowed.

Respectfully submitted,

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